

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Office of Supreme Court, U.S.  
FILED

OCT 25 1951

CHARLES ELMORE BOYLE  
COLLEGE

LORETTA STARVUS STACK, AL  
RICHMOND, PHILIP MARSHALL  
CONNELLY, DOROTHY ROSENBLUM  
BEALEY, ERNEST OTTO FOX,  
WILLIAM SCHNEIDERMAN, CARL  
RUDE LAMBERT, HENRY STEINBERG,  
CLETA O'CONNOR YATES, ROSE  
CHERNIN KUSNITZ, MARY BERNADETTE  
DOYLE and ALBERT JASON LIMA.

No. 400

Petitioners-Appellants,

-vs-

JAMES J. BOYLE, United States  
Marshal,

Respondent.

TRANSCRIPT OF RECORD ON APPEAL

(AL RICHMOND)

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TABLE OF CONTENTS

Petition For Writ Of Habeas Corpus  
Order To Show Cause Why Writ Of Habeas Corpus Should Not Issue  
Return To Writ And Indictment Annexed Thereto  
Stipulation And Order of Consolidation  
Memorandum Opinion Of District Court  
Order Denying Petitions For Writs Of Habeas Corpus  
Notice Of Appeal  
Designation Of Record

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7

8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

11 AL RICHMOND

12 Petitioner,

13 v.

14 JAMES J. BOYLE, United

15 States Marshal,

16 Respondent.

17

18 No. 13437-HW  
19 PETITION FOR WRIT OF  
20 HABEAS CORPUS

21 TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN  
22 DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

23 Al Richmond, the petitioner above named  
24 hereby petitions this honorable Court for a writ of habeas corpus  
25 directing the respondent James J. Boyle, United States Marshal  
26 for the Southern District of California, in whose custody peti-  
27 tioner is now restrained of his liberty, to produce the body of  
28 your petitioner, Al Richmond before this Court at  
29 a time and place specified and then and there to show cause why  
30 petitioner should not be released from the custody of the re-  
spondent upon bail in such reasonable sum as may be determined  
by this Court; and in support thereof, your petitioner alleges  
as follows:

31 I.

32 On July 25, 1951, a warrant was issued by Howard V.

1 Calverley, United States Commissioner in the Southern District of  
2 California, pursuant to a complaint charging your petitioner and  
3 one William Schneiderman, with conspiracy to commit offenses  
4 against the United States prohibited by Section 2 of the Smith Act,  
5 54 Stat. 671.

6 II.

7 On July 26, 1951, petitioner was unlawfully arrested by agents  
8 of the Federal Bureau of Investigation who produced no warrant for  
9 arrest and stated that they needed no warrant of arrest for your  
10 petitioner although your petitioner demanded the production of a  
11 warrant of arrest; that said agents declined to state the reasons  
12 for your petitioner's arrest or the existence of any charges  
13 against petitioner or the fact that a warrant had been issued, and  
14 thereupon forcibly took petitioner into custody.

15 III.

16 Following petitioner's arrest as aforesaid and on July 26,  
17 1951, petitioner was arraigned before United States Commissioner  
18 Francis St. J. Fox in San Francisco and by said Commissioner  
19 was ordered to be held in custody upon bail fixed by said Com-  
20 missioner in the sum of \$75,000, and by virtue of such order  
21 your petitioner was confined in the County Jail of the City  
22 and County of San Francisco in the custody of the acting United  
23 States Marshal.

24 IV:

25 Thereafter and on or about July 27, 1951, petitioner made  
26 application to the Honorable Louis E. Goodman, a Judge of the  
27 United States District Court for the Northern District of Cali-  
28 fornia for a reduction of said bail. On said day the said  
29 District Judge modified the aforementioned order of the said  
30 Commissioner and did make his order fixing bail in the sum of  
31 \$50,000. In fixing the said sum the District Judge rule that  
32 the narrow question before him was the amount of bail which

1 should be fixed pending removal to this Court where the com-  
2 plaint originally issued. By virtue of said Order of said Judge,  
3 petitioner remained confined in the County Jail of the City and  
4 County of San Francisco in the custody of the acting United  
5 States Marshal.

6 V.

7 Thereafter, on July 28, 1951, petitioner filed a petition  
8 for writ of habeas corpus to the said Honorable Louis E. Good-  
9 man, for a reduction of bail and the said Judge, basing his  
10 ruling on the record of proceedings of July 27, 1951, denied  
11 the petition.

12 VI.

13 Upon information and belief, the United States Attorney  
14 for the Southern District of California, summoned a Grand Jury  
15 to convene on July 31, 1951, at 9 A.M. and in the space of  
16 about fifteen minutes the said Grand Jury returned the indict-  
17 ment herein, charging your petitioner together with the above-  
18 mentioned defendants with a conspiracy to violate Section 2 of  
19 the Smith Act, 54 Stat. 671.

20 VII.

21 On August 1, 1951, petitioner was removed from the County  
22 Jail of the City and County of San Francisco and brought to  
23 the County of Los Angeles where petitioner was confined in the  
24 County Jail of the County of Los Angeles under the custody of  
25 the United States Marshal James J. Boyle.

26 VIII.

27 Thereafter, and on August 2, 1951, petitioner was taken  
28 before the Honorable James M. Carter, the Judge of this Court  
29 before whom the indictment was returned. Upon information and  
30 belief, the true bill returned against the defendants contained  
31 no recommendation by the Grand Jury relative to bail. Upon  
32 information and belief, the names of the defendants were written

1 on a copy of the indictment with the notation of \$75,000 for all  
2 defendants except the defendant William Schneiderman, where the  
3 notation was \$100,000, and that these writings were unsigned.  
4 Upon arraignment before the said Judge no further reference was  
5 made to bail.

6  
7 IX.

8 Thereafter and on August 6, 1951, petitioner moved in the  
9 United States District Court for the Southern District of Cali-  
10 fornia, Central Division, to fix bail in a reasonable sum or if  
11 bail had been fixed in the sum of \$75,000 as aforesaid, then for  
12 a reduction of this excessive bail to a reasonable amount.

13  
14 X.

15 On August 6, 1951, the aforesaid motion to fix or reduce  
16 bail came on for argument before the Honorable James M. Carter,  
17 United States Judge for the Southern District of California, Cen-  
18 tral Division.

19  
20 XI.

21 Before the commencement of the argument of the motion to  
22 fix or reduce bail your petitioner along with the other defen-  
23 dants named in the indictment herein except William Schneiderman  
24 filed with the said Court an affidavit of personal bias and pre-  
25 judge and requested the said Court to disqualify itself and to  
26 transfer the hearing on bail to another judge of the District  
27 Court pursuant to the provisions of 28 U.S.C.A. Section 144;  
28 that said Judge declined to disqualify himself and held the affi-  
29 davit of personal bias and prejudice legally insufficient on  
30 August 7, 1951.

31  
32 XII.

33 That thereupon, and at the request of counsel for one of  
34 the defendants herein, Philip Marshall Connelly, the said Judge  
35 James M. Carter withheld his ruling on the said Connelly's motion  
36 to fix or reduce bail until an application could be made to the

1 United States Court of Appeals for the Ninth Circuit for a  
2 ruling on the sufficiency of the aforesaid affidavit of bias  
3 and prejudice. 5

XIII.

5 That thereafter, the motion to fix or reduce bail on your  
6 petitioner's behalf was argued before the said Judge and on  
7 August 8, 1951, your petitioner's bail was fixed at the sum of  
8 \$50,000.

XIV.

10 Thereafter, on August 13, 1951, your petitioner filed a  
11 petition for writ of habeas corpus in this Court praying that  
12 the writ issue and that petitioner be released from the custody  
13 of the respondent upon reasonable bail, and on the said day the  
14 writ was issued by the Honorable William C. Mathes, a Judge of  
15 this Court and made returnable before said Judge on August 13,  
16 1951.

XV.

18 On August 15, 1951, the said writ came on for hearing before  
19 the said Judge William C. Mathes, and after hearing, and by  
20 order dated August 17, 1951, the said petition was dismissed  
21 and the writ discharged.

XVI.

23 On August 18, 1951, your petitioner filed a notice of ap-  
24 peal to the United States Court of Appeals for the Ninth Cir-  
25 cuit from the aforesaid order discharging the writ of habeas  
26 corpus.

XVII

38 Thereafter, and on August 24, 1951, the United States Court  
29 of Appeals rendered its decision on the application of the de-  
30 fendant herein, Philip Marshall Connelly, to disqualify the  
31 aforesaid Judge James M. Carter, and the said Court did hold  
32 that the aforesaid affidavit of bias and prejudice was legally

1 sufficient and ordered the said Judge to proceed no further  
2 respecting the said Connelly's bail proceedings or in connec-  
3 tion with the said Connelly's prosecution under the indictment.

4 XVIII.

5 In view of the decision of the Court of Appeals, and  
6 because of the doubt created thereby as to whether the said  
7 Judge James M. Carter had the power or jurisdiction originally  
8 to fix or reduce bail for petitioner or the other petitioners  
9 herein, after the aforesaid joint affidavit of bias and preju-  
10 dice was filed, the petitioner decided to withdraw the afore-  
11 said appeal.

12 XIX.

13 On August 27, 1951, the United States Attorney for the  
14 Southern District of California, counsel for the respondent,  
15 and counsel for the petitioner stipulated in writing to dis-  
16 miss the aforesaid appeal and said stipulation was filed with  
17 the clerk of the United States Court of Appeals for the Ninth  
18 Circuit in accordance with Rule 16 of the said Court.

19 XX.

20 On August 29, 1951, petitioner together with the other de-  
21 fendants has brought before the said James M. Carter who for-  
22 mally disqualified himself, and thereupon the proceedings were  
23 assigned by the presiding Judge of the said District Court to  
24 the aforesaid Judge William C. Mathes.

25 XXI.

26 On August 29 and 30, 1951, argument on motions to fix or  
27 reduce bail were made before the said Judge William C. Mathes  
28 and the said Judge on August 30, 1951, fixed bail for petition-  
29 er in the sum of \$50,000. At the same time, the said Judge set  
30 September 18, 1951 as the time for filing motions and September  
31 26 as the time for argument of said motions; and fixed Septem-  
32 ber 10, 1951, as the day for the appearance of counsel to de-

1 determine the date of trial which the said Judge indicated would  
2 be October 30, 1951, unless strong reason was shown to the  
3 contrary.

XXII.

5 Your petitioner is wholly unable to furnish bail in the sum  
6 of \$50,000 and by virtue thereof all the proceedings heretofore  
7 had herein which have confined your petitioner in the County Jail  
8 have unlawfully deprived petitioner of liberty and abridged the  
9 rights guaranteed petitioner by the Fifth and Eighth Amendments  
10 to the Constitution of the United States. Exhibits A and B an-  
11 nexed hereto and made a part hereof clearly reveal that petition-  
12 er has been denied equal justice by the action of the Court in  
13 fixing bail at the grossly excessive sum of \$50,000.

XXIII.

15 Petitioner is advised by Counsel that under the Constitution  
16 petitioner is entitled to bail as a matter of right and that the  
17 requirement of excessive bail is a denial of bail. Your petition-  
18 er is entitled to freely prepare a defense, to consult with  
19 counsel and witnesses, and all of this is denied by the unlawful  
20 confinement herein.

XXIV

22 Petitioner is a naturalized citizen of the United States and  
23 has lived continuously in this country for the past 29 years, hav-  
24 ing been born in England and having first been brought to the  
25 United States at the age of three.

XXV.

28 Petitioner is married to a citizen of the United States and  
29 is the father of two minor children born in the United States.  
30 Petitioner lives with his said wife and children in the City and  
31 County of San Francisco, State of California, and has lived in  
32 said City and County continuously since 1937 or 1938, except for

1 a period of three years during which your petitioner was a member  
2 of the Armed Services of the United States in World War II and  
3 serving a portion of said period overseas.

XXVI.

6 Petitioner is purchasing and owns and lives in his own home  
7 in the City and County of San Francisco.

XXVII.

10 Petitioner has never been heretofore arrested or charged with  
any offense.

XXVIII.

13 Petitioner is employed as a newspaperman, to wit, Executive  
14 Editor of the "Daily People's World," and he earns a salary of  
15 \$50.00 per week.

KXIX.

18 Petitioner hereby states and represents to this Court that  
19 he intends in good faith to remain and that he will remain within  
20 the jurisdiction of this Court at all times throughout the prosecu-  
21 cution of the proceedings under the indictment and that he does  
22 not intend to and will not at any time during such proceedings  
23 leave the jurisdiction of this Court without the approval of the  
24 Court. Petitioner believes that he is not guilty of the offense  
25 charged in the indictment and he intends to vigorously prosecute  
26 his defense. Petitioner believes that upon the trial of this in-  
27 dictment herein, he will be entitled to a verdict of not guilty  
28 and that a conviction upon the allegations thereof would deprive  
29 him of liberties secured to him by the Constitution of the United  
30 States.

XXX

2 In order to properly prepare petitioner's defense with the  
3 aid of counsel, it is vital that petitioner be released on reason-  
4 able bail. An order was entered by the aforesaid Judge William C.  
5 Mathes on August 31, 1951 directing the conditions under which  
6 petitioner and the co-defendants could prepare for trial. A copy  
7 of the aforesaid Order is annexed hereto and marked Exhibit "C."  
8 The provisions made in the said Order for the conditions under  
9 which the petitioner and the co-defendants may prepare for trial  
10 remain inadequate, and under the circumstances hereinafter set  
11 forth will place onerous burdens upon the petitioner in the prep-  
12 aration of the defense to the charges contained in the indictment.  
13 The petitioner avers that unless petitioner is released on reason-  
14 able bail, petitioner will be deprived of a fair trial without due  
15 process of law.

XXXI

17 Under the aforesaid Order the petitioner is permitted to work  
18 with counsel on the preparation of the case on Mondays through  
19 Fridays only between the hours of 9 A.M. and 5 P.M. These limita-  
20 tions upon the hours of work disregard the scope and nature of the  
21 preparation which must be made in the case herein and which, if a  
22 proper defense is to be made, requires fulltime preparation, es-  
23 pecially in the evenings and on weekends. In addition, the peti-  
24 tioner must prepare, under the said Order, with co-defendants and  
25 counsel in a room in the Federal Building or at such place as the  
26 respondent shall select; while working in said designated room,  
27 petitioner is required to bring in meals at petitioner's own ex-  
28 pense; bring in books, documents and other materials without cen-  
29 sorship as to content only; and allowed to consult with witnesses  
30 provided that each witness shall furnish to respondent his name,  
31 address, crime record, if any, and general occupation.

1  
2 For the purpose of adequately preparing for their defense  
3 herein it will be necessary for the defendants including petition-  
4 er to examine and study each of the exhibits offered by the Gov-  
5 ernment in the case of United States v. Dennis and each of the ex-  
6 hibits offered by the defendants in said case, for the reason that  
7 the indictment herein charges that each of the defendants herein  
8 are parties to the same alleged conspiracy which was the basis of  
9 the charge against the defendants in the said case of United States  
10 v. Dennis.

11  
12 In the said case of United States v. Dennis the Government  
13 offered at the trial 234 exhibits of which number approximately  
14 200 were admitted in evidence. The said exhibits included por-  
15 tions of books such as the "English Version, Seventh World Cong-  
16 ress, Communist International, Volume 15" with more than 850 pages,  
17 excerpts from numerous editions of the Daily Worker and excerpts  
18 from numerous other pamphlets and documents published over a per-  
19 iod of many years. For example, the first twenty Government ex-  
20 hibits out of the total of 234 offered were:

21 1. Photostatic copy of an article from "Daily Worker" of  
22 October 2, 1935.

23 2. Pages 861 and 862 of book entitled "English Version.  
24 Seventh World Congress. Communist International 8/8/35"--  
25 Vol. 15.

26 3. Excerpts from booklet entitled "Program of the Commu-  
27 nist International." (These excerpts ran from page 14473 to  
28 page 14520 in the Joint Appendix of the said case of United  
29 States v. Dennis.)

30 4. Excerpts from Manual entitled "Manual of Organization"  
31 by J. Peters. (These excerpts ran from page 14521 to 14536  
32 in the said Joint Appendix.)

1       5. Excerpts from Manual entitled "Why Communism?" by M.  
2       J. Olgin. (These excerpts ran from page 14537 to 14555 in  
3       the said Joint Appendix.)

4       6. Book entitled "Foundations of Leninism," by Joseph  
5       Stalin. (The entire book consisting of 123 printed pages  
6       was admitted in evidence.)

7       7. Article "Strengthen National Unity," by Earl Browder,  
8       from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

9       8. Booklet entitled "The Communist," dated Feb., 1944.

10       8-A. Pages 107 and 108 of booklet entitled "The Commu-  
11       nist" of Feb., 1944.

12       9. Pamphlet entitled "The Path to Peace, Progress and  
13       Prosperity" - May 20-22, 1944.

14       10. Page 10 of New York Times - 5/7/45.

15       11. Page 1 of New York World Telegram - 5/22/45.

16       12. Photostat of "Daily Worker" of 5/24/45.

17       12-A. Article, "On the Dissolution of the Communist Party  
18       of the United States of America," by Jacques Duclos, from  
19       pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This art-  
20       icle ran from page 14557 to 14580 in the said Joint Appen-  
21       dix.)

22       13. Photostat of "Daily Worker" of June 4, 1945.

23       13-A. Article "The Present Situation and Next Tasks"  
24       Resolution of National Board Communist Political Associa-  
25       tion adopted June 2, 1945, from pages 4 and 5 of "Daily  
26       Worker" of June 4, 1945. (This article ran from page  
27       14581 to page 14594 in the said Joint Appendix.)

28       14. Photostat of "Daily Worker" of June 10, 1945.

29       14-A. Article "On Revisionism in the C.P.A." from pages  
30       7 and 8 of "Daily Worker" of June 10, 1945. (This article  
31       ran from page 14594 to 14601 in the said Joint Appendix.)

32       15. Photostat of "Daily Worker" of June 16, 1945.

1 15-A. Article "Thompson Discusses Browder's Program" by

2 Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

3 16. A letter.

4 17. Booklet entitled "Political Affairs," dated July, 1945,

5 and excerpts from said booklet as indicated. (These ex-  
6 cerpts ran from page 14608 to page 14652 in the said Joint  
7 Appendix.)

8 18. Photostat of "Daily Worker" of June 22, 1945.

9 18-A. Article "CPA National Committee backs Resolution,

10 Calls Convention," page 2 of "Daily Worker" of June 22,  
11 1945.

12 19. Photostat of "Daily Worker" of 6/23/45.

13 19-A. Article "Call CPA Convention July 26" from page 3  
14 of "Daily Worker" of 6/23/45.

15 20. Photostat of "The Worker" of 6/24/45.

16 20-A. Article "Says Leadership Can't Shirk Responsibili-  
17 ties for Errors," by John Williamson, from page 8 of "The  
18 Worker" of 6/24/45.

19 The defense in that case offered 346 exhibits of which 93  
20 were admitted in evidence. The said exhibits were similar in  
21 source and length to those offered by the prosecution.

22 XXXIV

23 In order to adequately prepare for the defense it will be  
24 necessary for the defendants including petitioner to examine each  
25 of the aforesaid exhibits in their entirety in order to ascertain  
26 whether portions of the exhibits not offered or received in evi-  
27 dence may be used to rebut the inferences which the Government  
28 will ask the jury to draw from the portions of the exhibits which  
29 it offers. In addition, it will be necessary for the defendants  
30 to examine numerous other books, pamphlets and newspapers in order  
31 to determine what related material is available to them for the  
32 purposes mentioned above.

XXXV

2 Many of the books, documents and pamphlets are, so far as de-  
3 fendants know, not readily available at any one place and it will  
4 be necessary for defendants to examine the bibliographies of vari-  
5 ous libraries such as the Los Angeles Public Library, the Univer-  
6 sity of California Library at Los Angeles, the Huntington Library,  
7 and others, and to visit various book stores to determine what  
8 books and pamphlets they have available, to examine their own  
9 files, records and libraries, as well as to seek to find other  
10 persons who may have some of said books, pamphlets or documents  
11 available.

XXXVI

13 The defendants including petitioner have been advised by  
14 their counsel that it will be impossible for their counsel to un-  
15 dertake the responsibility for this work and that if preparation  
16 is to be made with respect to the various documents which may be  
17 offered on behalf of the Government and which should be offered on  
18 behalf of the defense, it will be necessary for the defendants  
19 themselves to secure such documents to become thoroughly familiar  
20 with them, to analyze them and to present their analysis to their  
21 said counsel.

XXXVII.

23 In addition to the books, records and documents offered by  
24 both sides in the case of United States v. Dennis, it will be ne-  
25 cessary for the defendants including petitioner to examine numer-  
26 ous publications, pamphlets and similar documents which were is-  
27 sued on the West Coast which it will be necessary for the defen-  
28 dants to secure from the various sources enumerated above in order  
29 to prepare to meet evidence which the Government may offer with  
30 respect to the ideas and beliefs and the speech and writings of  
31 these defendants, and in order to present their own defense with  
32 respect to such ideas, beliefs, speech and writings.

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

## XXXIX

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

## XL

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial.

There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

XLI

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLI/1

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLI/1/1

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLI/1/2

With respect to the said Daily People's World, as alleged in

1 the petition of Philip Marshall Connelly, this newspaper was pub-  
2 lished last year Monday through Friday of each week and prior to  
3 that time and for a number of years prior to April 1, 1945, said  
4 newspaper was published Monday through Saturday of each week. In  
5 order, therefore, just to examine and analyze the issues of the  
6 said paper commencing April 1, 1945 (the date when the alleged con-  
7 spiracy herein was begun) it would be necessary to examine 1,770  
8 issues of not less than four pages and as many as eight to ten  
9 pages of conventional size or tabloid size newspaper. The other  
10 publications named in the indictment herein are, on information  
11 and belief, of considerable volume probably exceeding in size that  
12 of the Daily People's World as aforesaid.

KEY

14 In order to properly prepare the defense herein as above out-  
15 lined, there is need for petitioner's freedom on reasonable bail  
16 so that petitioner can earn his livelihood and obtain the necessary  
17 funds required in a legal defense of the scope hereinabove stated.  
18 Petitioner cannot properly prepare a defense while petitioner and  
19 petitioner's witnesses are subject to surveillance and confinement  
20 in a room, where petitioner is unable to earn a livelihood and  
21 where the time for consultation among counsel, witnesses and peti-  
22 tioner is severely limited.

XLVII

24 In view of the facts and circumstances hereinabove set forth,  
25 petitioner respectfully submits to the Court that petitioner is at  
26 the present time unlawfully imprisoned and restrained of petition-  
27 er's liberty; that petitioner's imprisonment and detention are il-  
28 legal, arbitrary and a denial of rights secured to petitioner by  
29 the Constitution of the United States and that bail in the sum of  
30 \$50,000 is so excessive and so unreasonable as to constitute an  
31 absolute denial of petitioner's right to bail and petitioner's  
32 right as a matter of due process of law to properly defend peti-

tioner against the charges which have been brought against petitioner.

XLVII

That no previous application for a writ of habeas corpus has been made in this matter to any other court except as hereinabove alleged.

WHEREFORE, petitioner prays that a writ of habeas corpus may issue directed to James J. Boyle, United States Marshal, Southern District of California, Central Division, and to any other officers having custody of the body of your petitioner, commanding him to have the body of your petitioner produced before this Court at a time and place to be specified, to do and receive what shall then and there be considered concerning your petitioner together with time and cause of petitioner's detention and said writ; and that this honorable Court order and direct that petitioner be released from such custody forthwith upon such reasonable bail as may be determined in the premises.

DATED: This 4th day of September, 1951.

131 Al Richmond

(Signed September 4, 1951)

**EXHIBIT A**

The Pending Register of Federal Criminal Actions in the  
al District was examined. Approximately 186 cases were  
cases. The only cases where bail was fixed at \$10,000  
re is the annexed list. Many of these annexed indict-  
contained more than one count.

	<u>CHARGE</u>	<u>PENALTY</u>	<u>BAIL</u>
8	Mail fraud and conspiracy	5 years - \$10,000	\$25,000
9		(5 counts)	
10	Failure to self-deport)	10 years	25,000
11	Failure to self-deport)	10 years	15,000
12	Concealing assets in bank	5 years - \$5,000	15,000
13	Transmission of threatening		
14	letters	5 years - \$1,000	15,000
15	Transmission of threatening		
16	letters	5 years - \$1,000	10,000
17	Perjury	5 years - \$2,000	10,000
18	Evasion of Income Tax	5 years - \$10,000	10,000
19	Firearms in Interstate		
20	Commerce	5 years - \$2,000	10,000
21	Robbery of United States Mail	10 years	10,000
22	Conspiracy to defraud Govt.	10 years - \$10,000	10,000 re-
23			duced to 5,000
24	Concealing assets	5 years - \$5,000	10,000
25	Smith Act Prosecutions in New York		

## Smith Act Prosecutions in New York

26 (1) Dennis v. U. S. - 12 defendants  
27 \$5,000 after indictment. After conviction -  
28 \$20,000 each - fixed by Circuit Court. Bail  
29 continued by Jackson, J., pending applications  
30 for writ. (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

1 (2) U. S. v. Flynn, et al

2 Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon,  
3 Jerome, Weinstone, Charney, Begun, Johnson.  
4 \$10,000 - Increase to \$50,000 sought, denied.  
5 Jones, Gannet, and Bittelman - \$20,000 - In-  
6 crease to \$75,000 sought, denied. Mindel -  
7 \$5,000 - Increase to \$50,000 sought, denied.  
8 Amter - \$1,000 - no increase sought.

9 (3) Hawaii-U.S. v. Hall, et al

10 Bail fixed by Commissioner for 7 defendants at  
11 \$75,000. Reduced by Judge Delbert E. Metzger  
12 to \$5,000. After indictment, bail fixed at  
13 \$7,500.

14 (4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

15 Bail fixed by Commissioner in sum of \$100,000.  
16 Reduced by Judge William Kirkpatrick in Phila-  
17 delphia to \$20,000.

18 (5) Baltimore-U.S. v. Frankfeld

19 Bail fixed by Commissioner at \$75,000. Reduced  
20 for one defendant to \$5,000; second defendant  
21 to \$17,500; third defendant to \$10,000.

22 Terminal Island Four

23 (Carlson v. U.S.)

24 Charge - Alien Communists and advocates of force  
25 and violence. Pending deportation proceedings,  
26 bail denied by Attorney General, District Court  
27 and Circuit Court. On application for writ of  
28 certiorari, bail in sum of \$5,000 unanimously  
29 fixed by United States Supreme Court sitting  
30 as entire body.

32 EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than \$10,000. The following is a tabulation:

<u>Bail</u>	<u>No. of Cases</u>
\$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 80% of the total number of cases. The average bail in all of the cases where the penalty was 5 years and up amounts to less than \$3,000.

The following are the cases in the Pending Register of Criminal Actions in Central District where the bail was below \$10,000:

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
Forgery	10- \$1,000	3	\$ 1,000
Passing altered money order	5- 5,000	2	2,000
Forging and uttering U. S.			
Treasury check	10- 1,000	2	1,000
Forging and uttering check	5- 1,000	2	Own Recognizance
Forging and uttering check	5- 1,000	2	500
Forging and uttering			
Government obligation	5- 1,000	2	1,000
Harboring and concealing			
aliens	5- 1,000	1	1,500
Possession and sale of			
narcotics	10- 5,000	2	500
Illegal wearing uniform,			
U. S. Army	6mos 250	1	500
Unlawful wearing U.S.			
Navy Uniform	6 mos 250	3	500
Forging and uttering			
Government draft	10- 1,000	2	1,000
Unlawful possession of			
ration points	1-10,000	1	5,000
Forgery, personation and			
Conspiracy	10-10,000	4	3,000
Forgery, personation and			
Conspiracy	10-10,000	4	2,000
Conspiracy, possession of			
writings and sugar stamps	5-10,000	5	5,000
Conspiracy, possession of			
writings and sugar stamps	5-10,000	5	Own Recognizance

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Buying and selling meat			
3 in excess of price			
4 Control	5- \$10,000	5	\$ 5,000
5 Concealment of assets			
6 from trustee in			
7 bankruptcy	5- 5,000	3	10,000
8 Attempt to wreck a train	5- 5,000	1	5,000
9 Mailing scurrilous postal			
10 cards	5- 5,000	5	500
11 False claim of citizen-			
12 ship	5- 10,000	1	2,500
13 Internal Revenue Code			
14 (Fraudulent income tax return)	5-10,000	4	
15 Failure to report for			
16 induction and to keep			
17 Board informed of			
18 address	5-10,000	2	2,500
19 Treason	death		No Bail
20			
21 Transport stolen motor			
22 vehicle	5- 5,000	1	5,000
23 False claim of citizen-			
24 ship	5-10,000	1	500
25 Conspiracy and fraud			
26 vs. Government	5-10,000	24	10,000* (on motion reduced to 5,000)
27			
28 Mann Act	5- 5,000	1	1,000
29 Servicemen's Readjustment			
30 Act #44	1- 1,000	4	Own Recogni- zance
31 Transport stolen motor			
32 vehicle	5- 5,000	1	
* Referred to in Exhibit A			

<u>1. CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Juvenile Delinquency			
3 Forgery U.S. Money Order)		1	
4 Mailing obscene letter	10- \$ 5,000	1	\$ 2,500
5 Engage in business of			
6 purchasing spirits for			
7 resale without basic			
8 permit		2	2,500
9 Transport stolen motor			
10 vehicle	5- 5,000	1	
11 Forging and cashing			
12 Government bonds	10- 1,000	2	2,500
13 Theft of mail	5- 2,000	1	1,000
14 Forging Government			
15 Obligation	15- 5,000	1	500
16 Bank robbery, transport-			
17 ing interstate stolen			
18 money and flight to			
19 avoid prosecution	25-10,000	3	Held No Bond
20 Forging and uttering			
21 Government check	10- 1,000	2	1,000
22 Transporting stolen motor			
23 vehicle in foreign			
24 commerce	5- 5,000	1	3,000 (reduced to 2,000)
25			
26 Anti-trust conspiracy to			
27 fix, determine, establish			
28 and maintain noncompetitive			
29 prices, etc. of fire			
30 extinguishers	1- 5,000	1	Own Recogni- zance (later 1,000)
31			
32			

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Theft of Government			
3 property, forging			
4 and uttering Govern-			
5 ment checks	10- \$ 10,000	4	\$ 2,500
6 Sale and possession of			
7 narcotics	10- 5,000	2	2,500
8 Conspiracy, false state-			
9 ments to Government	5- 10,000	2	3,000
10 Purchase of narcotics,			
11 receiving and trans-			
12 porting narcotics	10- 5,000	2	2,500
13 Forging postal money			
14 order	5- 5,000	4	500
15 False statement in appli-			
16 cation for Survivors			
17 Insurance Benefits	1- 1,000	12	1,000
18 Evasion of Income Tax	5- 10,000	1	1,000
19 Migratory	6 mos. 500	1	
20 Embezzlement, abstraction,			
21 misapplication funds			
22 H.O.L.C., and false			
23 entry in book	5- 10,000	24	Own Recogni- zance (later 5,000)
24			
25 Evasion income taxes	5- 10,000	2	1,000
26			Released Own Rexognizance on Motion
27 Evasion income taxes	5- 10,000	1	1,000
28 Misapplication and			
29 Embezzlement of National			
30 bank funds	5- 5,000	6	1,000
31 Evasion income taxes	5- 10,000	2	2,000
32			

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Evasion income taxes	5- \$10,000	2	Own Recogni- zance
3 Failure to file in- come tax return	1- 10,000	1	\$ 2,500
4			Released own recognizance
5			
6 Forging and uttering			
7 government checks	10- 1,000	2	1,000
8 Transporting stolen			
9 car	5- 5,000	1	1,000
10 Transmission Inter-			
11 state threatening			
12 communications;			
13 mailing threatening			
14 letters	20- 5,000	4	15,000*
15 Sale of narcotics	10- 5,000	2	1,500
16 False statement in			
17 application for			
18 Federal Housing			
19 Loan		4	400
20 Conspiracy to defraud, make			
21 pass, utter and pub-			
22 lish statements re:			
23 FHA Title Loan application	5- 10,000	41	2,000
24 Conspiracy to defraud, make			
25 pass, utter pub-			
26 lish statements re:			
27 FHA Title Loan			
28 Application	5- 10,000	41	1,000
29 Perjury before ICC, making			
30 false statements on oath			
31 before examiner	5- 2,000	1	1,500
32 * Referred to in Exhibit A			

<u>OFFENSE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Anti-trust, fixing			
3 prices for fish	1- \$ 5,000	2	\$ 1,000
4 Perjury; false state-			
5 ments to and con-			
6 cealing facts from			
7 Department of Army	5- 2,000	6	Own Recogni- zance
8 Official asking and			
9 accepting bribe	3-	14	1,000
10 Embezzlement and theft			
11 of U.S. property			
12 False documents			
13 Filed with Department			
14 of Agriculture	5- 10,000	28	Own Recogni- zance then 3,5000
15			
16 Contempt, failure to			
17 appear before Grand			
18 Jury		1	1,000
19 Forging U.S.			
20 Treasury Checks	10- 1,000	8	1,000
21 Concealment of narcotics	10- 5,000	1	2,000
22 Perjury committed before			
23 Federal Grand Jury	5- 2,000	1	5,000
24 Mail fraud and Conspiracy	5-10,000	5	25,000*
25 Mail fraud and Conspiracy	5- 10,000	5	500 (vacated and released on own recogni- zance)
26			
27			
28 Accessory to bank robbery			
29 and receiving proceeds			
30 thereof	12- 5,000	2	5,000
31 *Referred to in Exhibit A			
32			

1	CHARGE	PENALTY	COUNTS	BAIL
2	Conspiracy to commit			
3	offenses in violation of Title			
4	47, Sec. 605;			
5	(Unauthorized			
6	publication or use			
7	of communications)	5-\$10,000	1	\$ 7,500
9	Conspiracy to commit			
10	offenses in violation of Title 47;			
11	Sec. 605; (Unauthorized publication or use of communications)	5- 10,000	1	1,000
12	Evasion of income tax	5- 10,000	3	1,500
13	Evasion of income tax	5- 10,000	2	1,500
14	Transport interstate of stolen auto	5- 5,000	1	3,000
15	Evasion of income tax	5- 10,000	1	1,000
16	Transport forged security matter	10- 10,000	1	2,000
17	Mailing obscene matter	10- 5,000	15	2,000
18	Illegal importation and concealment of narcotics	10- 5,000	2	2,500
19	Embezzlement and theft of U.S property	10- 10,000	20	Own Recognizance

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNT</u>	<u>BAIL</u>
2 Concealing assets and con-			
3 cealing records in con-			
4 tempt of Bankruptcy;			
5 Conspiracy; mail fraud	5- \$ 10,000	6	\$ 5,000
6 Misbranded device and drug			
7 in interstate commerce	1- 1,000	1	own recogni- zance
8 False claim of citizenship	5- 10,000	2	7,500
9 Evasion income tax	5- 10,000	2	1,500
10 Transport stolen motor vehicle	5- 5,000	1	3,000
11 Ship misbranded drug in			
12 interstate commerce	1- 1,000	2	Own recogni- zance
13 Mail fraud	5- 1,000	17	2,500
14 Robbery from mails	5- 10,000	1	10,000*
15 Evasion income tax	5- 10,000	4	1,500
16 Evasion income tax	5- 10,000	2	1,500
17 Evasion income tax	5- 10,000	2	1,500
18 Evasion income tax	5- 10,000	4	1,500
19 Evasion income tax	5- 10,000	4	1,500
20 Evasion income tax	5- 10,000	4	1,500
21 Conspiracy to commit offens-			
22 es against U.S.; conspiracy			
23 to cause to be made false			
24 papers re: Veterans Eligibility for Home Loans under			
25 Servicemen's Readj. Act, 1944	5- 10,000	9	1,000
26 Evasion income tax	5- 10,000	4	1,500
27 Failure to register firearm;			
28 Interstate transport. unregistered Firearm	5- 2,000	2	10,000*
29 Interstate transport motor			
30 vehicle stolen	5- 5,000	1	2,000

\*Referred to in Exhibit A

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2. Illegal sale of			
3. narcotics	5 - \$2,000	3	2,500
4. IRC - evasion of			
5. income tax;			
6. Making false statements			
7. (Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
8.			
9. IRC - evasion of			
10. income tax;			
11. Making false			
12. statements (Mickey			
13. Cohen case - wife)	5 - 10,000	1	2,500
14. Theft of mail,			
15. obstruction of			
16. correspondence	5 - 2,000	1	1,000
17. Transport stolen car	5 - 5,000	1	1,000
18. Theft of mail by			
19. postal employee	5 - 2,000	1	1,000
20. Failure to report for			
21. induction	5 - 10,000	1	5,000
22. Perjury committed before			
23. Grand Jury	5 - 2,000	2	10,000*
24. Obstruction of			
25. correspondence	5 - 500	1	2,000
26. Transport stolen auto	5 - 5,000	1	5,000
27. Failure to report for			
28. induction	5 - 10,000	1	2,500
29. Failure to file			
30. Questionnaire	5 - 1,000	2	2,500
31. * Referred to in			
32. Exhibit A			

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32
1	CHARGE				PENALTY				COUNTS				BAIL																		
2	Soliciting and attempt-																														
3	ing to sell auto in																														
4	excess of maximum																														
5	ceiling price																														
6	Concealment of assets																														
7	and records in bank-																														
8	ruptcy; conspiracy,																														
9	mail fraud	5 - 10,000							3				Own Recognizance																		
10	Failed and refused to																														
11	be inducted	5 - 10,000							1				2,500																		
12	Illegal possession of																														
13	Marijuana	5 - 2,000							1				1,500																		
14	Conspiracy to corruptly																														
15	endeavor to influence																														
16	a witness and solici-																														
17	tation of a bribe by																														
18	such witness	5 - 10,000							1				Own Recognizance																		
19	Failure to register																														
20	firearm	5 - 2,000							1				1,000																		
21	Failure to register																														
22	firearm	5 - 2,000							1				1,000																		
23	Servicemen's Readj.																														
24	Act 1944	1 - 1,000							3				500																		
25	Transport Stolen Auto	5 - 5,000							1				1,000																		
26	Failure to report for																														
27	induction	5 - 10,000							1				5,000 (reduced to 1,000)																		
28																															
29	Theft of mail by																														
30	postal employee	5 - 2,000							4				1,000																		
31	Theft of mail by																														
32	postal employee	5 - 2,000							3				1,500																		

EXHIBIT "B"

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Transport stolen car	5 - 5,000	1	\$2,000
3 Transport stolen car	5 - 5,000	1	5,000
4 Transport stolen car	5 - 5,000	1	1,000
5 Breaking into building			
6 used in part as			
7 Post Office	5 - 1,000	1	5,000
8 Mail fraud	5 - 1,000	11	5,000
9 Conspiracy; embezzle-			
10 ment funds National			
11 Bank	5 - 10,000	4	1,000
12 Theft from Interstate			
13 shipment and re-			
14 ceiving stolen goods	10 - 5,000	12	5,000
15 Forging of postal			
16 saving certificates			
17 and uttering same	5 - 5,000	8	500
18 Failure to report for			
19 induction	5 - 10,000	1	1,500
20 Failure to report for			
21 induction	5 - 10,000	1	1,000
22 Theft of mail	5 - 2,000	1	1,000
23 Mail threatening			
24 letter	20 - 5,000	1	10,000*
25 Illegal possession of			
26 Marijuana	5 - 2,000	1	1,000
27 Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
28 Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
29 Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
30 Federal Food, Drug and			
31 Cosmetics Act (Adul-			
32 terated food in Int.Com.)	1 - 1,000	18	Own Recognizance

\* Referred to

/in Exhibit A

<u>1 CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Federal Food, Drug and			
3 Cosmetics Act (Adul-			
4 terated food in in-			
5 terstate commerce)	1 - 1,000	4	Own Recognizance
6 Forging Government Check.	10 - 1,000	2	5,000
7 Obstruction of mail	5 - 2,000	2	5,000
8 Theft from interstate			
9 shipment	10 - 5,000	3	1,000
10 Theft on Government			
11 Reservation	5 - 5,000	2	500
12 Illegal wearing			
13 uniforms	6 - 250	1	1,000
14 Infringement of copy-			
15 righted movies	1 - 1,000	4	Own Recognizance
16 False claim for unem-			
17 ployment insurance			
18 benefits from R.R.			
19 retirement board	1 - 10,000	4	Own Recognizance
20 Transport stolen fire-			
21 arm	5 - 2,000	1	2,000
22 Failure to be inducted	5 - 10,000	1	1,000
23 Failure to be inducted	5 - 10,000	1	3,000
24 Forging and uttering			
25 Government check	10 - 1,000	2	1,000
26 Theft of mail	5 - 2,000	3	1,000
27 Theft of mail by			
28 postal employee	5 - 2,000	2	500
29 Theft of mail by			
30 postal employee	5 - 2,000	2	500
31 Theft of mail by			
32 postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

1	CHARGE	PENALTY	COUNTS	BAIL
2	Failure to be inducted	5 - \$10,000	1	\$1,000
3	Embezzlement of funds			
4	National Bank	5 - 5,000	4	1,000
5	Forging and uttering			
6	forged Postal			
7	Money Order	5 - 5,000	2	250
8	Forging Government Check	10 - 1,000	3	1,500
9	Failure to register			
10	firearm	5 - 2,000	1	1,000
11	Causing false claim to			
12	be made to Veterans'			
13	Adminstration re:			
14	Appraisal	1 - 1,000	1	Own recognition
15	False claim for unemploy-			
16	ment insurance benefits			
17	R.R. retirement board	1 - 10,000	2	Own recognition then 500
18				
19	False claim for unemploy-			
20	ment insurance R.R. retire-			
21	ment board	1 - 10,000	4	Own Recognition then 500
22				
23	Juvenile delinquency			
24	transfer of marijuana		1	500
25	Illegal sale of marijuana	5 - 2,000	2	2,500
26	Forging and uttering			
27	Government check	10 - 1,000	2	1,000
28	Embezzlement of funds			
29	of National Bank	5 - 500	4	Own recognition
30				
31				
32				

EXHIBIT "B"

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Interstate transport			
3 falsely made			
4 security	10 - \$10,000	1	2,500
5 False claim unemploy-			
6 ment insurance bene-			
7 fits R.R. retirement			
8 board	1 - 10,000	4	Own Recognizance then 500
9 Impersonation as			
10 Federal Officer	3 - 1,000	4	5,000
11 Theft of mail by			
12 postal employee	5 - 2,000	2	500
13 Illegal wearing Marine			
14 Corps uniform	6 mos.-500	1	500
15 False claim of citi-			
16 zenship	3 - 1,000	1	1,000
17 Theft of mail by			
18 Postal employee	5 - 2,000	2	500
19 Illegal sale and			
20 Possession of			
21 Marijuana	5 - 2,000	2	2,000
22 Theft of mail by			
23 Postal employee	5 - 2,000	2	3,000
24 Theft of Government			
25 property	10 - 10,000	4	1,000
26 Illegal possession			
27 of Marijuana	5 - 2,000	1	1,000
28 Conspiracy to de-			
29 fraud and commit			
30 offense - kick -			
31 backs on sub-			
32 contracts	2 - 10,000	9	2,500

EXHIBIT "B"

1 they may have brought to them their meals at their own expense.  
2  
3 3. The defendants shall be allowed to bring into said  
4 room and to maintain there such books, documents, pamphlets,  
5 and similar written or printed material as they shall desire,  
6 without censorship of any kind as to content, and the defendants  
7 shall be permitted to make and keep in said room and to deliver  
8 to their attorneys such notes, memoranda and documents as they  
9 desire, without censorship of any kind as to content. In  
10 addition, the defendants shall be permitted to bring to said  
11 room and keep there such office equipment as typewriters, and  
12 such office supplies as paper, carbon paper, pencils, pens, ink,  
13 etc.; provided, however, that none of the foregoing is intended  
14 to deprive the United States Marshal of the right to see to it  
15 that nothing other than materials of the kind permitted by this  
order are brought in.

16. 4. For the purpose of dealing with problems relating  
17. to their defense, the defendants shall be allowed, in the  
18. presence of an attorney, to visit and confer with such persons  
19. as the attorney shall designate; provided, however, that such  
20. person shall furnish to the United States Marshal his name,  
21. address, criminal record if any, and general occupation.

DATED this 31st day of August, 1951.

United States District Judge

20 PRESENTED BY:

MASTER S. BINNS  
Chief Assistant U. S. Attorney

1 MARGOLIS and McTERNAN  
2 112 West Ninth Street  
3 Los Angeles 15, California  
4 VAndine 7153  
5 and  
6 LEO A. SULLIVAN  
7 1440 Broadway Street  
8 Oakland, California  
9 HIgntower 4-1707

10 Attorneys for Petitioner

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
14  
15 CENTRAL DIVISION

16 AL RICHMOND,

17 Petitioner,

18 vs.

19 JAMES J. BOYLE, United States Marshal,

20 Respondent.

21 No. 13437-HW

22 ORDER TO SHOW CAUSE WHY  
23 WRIT OF HABEAS CORPUS  
24 SHOULD NOT ISSUE

25 Upon reading the verified petition of the petitioner on  
26 file herein,

27 IT IS HEREBY ORDERED that James J. Boyle, United States Marsh.  
28 for the Southern District of California appear before the above  
29 entitled Court in the courtroom of the Honorable  
30 at the United States Post Office and Court House Building, 312 North  
Spring Street, Los Angeles, California, on the 6th Day of September  
1951, at 2 P.M. of said day, then and there to show cause if any he  
may have why he should not release from his custody or the custody  
such officers or agents as may have the same for and on his behalf,  
the body of Al Richmond, petitioner herein, upon  
such reasonable bail as may be determined by this Court.

31 Good cause being shown therefor, it is hereby ordered that  
32 this Order and the said petition may be served upon the responde  
herein on or before September 4, 1951 at 2 P.M. of said day.

33 DATED: This 4th day of September, 1951.

34 /s/ Ben Harrison

35 JUDGE OF THE U.S. DISTRICT COURT

1 1951, by Howard V. Calverley, United States Commissioner for the  
2 Southern District of California, pursuant to a verified complaint  
3 charging said petitioner and one William Schneiderman with conspiracy  
4 to commit offenses against the United States prohibited by Section 2  
5 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C.  
6 (1940 Ed.) 2385.

7 III

8 That following said petitioner's arrest, ~~he~~ was taken  
9 without delay on July 26, 1951, before the nearest United States  
10 Commissioner, namely, Honorable Francis St. J. Fox, at San Francisco,  
11 California, who then and there arraigned said petitioner and set bail  
12 in the amount of \$7500 - pending removal to this district. There-  
13 after, on or about the 27th day of July, 1951, an application was  
14 made to the Honorable Louis E. Goodman, Judge of the United States  
15 District Court for the Northern District of California, for ~~reduction~~  
16 of said bail. Following a full hearing on said application, said  
17 District Judge modified the order of the Commissioner, and ~~reduced~~  
18 bail of the petitioner to the sum of \$50,000 pending removal of the  
19 petitioner to this district, and in default thereof ordered the  
20 petitioner committed to the custody of the United States Marshal  
21 in San Francisco, California. Thereafter, on July 28, 1951, the  
22 petitioner herein filed a petition for writ of habeas corpus, which  
23 petition was heard by the Honorable Louis E. Goodman, Judge of the  
24 United States District Court for the Northern District of California  
25 for the purpose of obtaining a further reduction of bail. This  
26 petition was denied.

7 IV

18 The grand jury for the Southern District of California, in  
19 and for the Central Division, met on the 27th, 30th, and 31st days  
20 of July, 1951, and, after hearing the evidence presented, did on the  
21 31st day of July, 1951, return an indictment against the petitioner  
22 herein and eleven other named defendants, a certified copy of which

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

10  
11 UNITED STATES OF AMERICA, No. 21883-Crim.  
12 Plaintiff,  
13 vs. ORDER  
14 WILLIAM SCHNEIDERMAN, et al.,  
15 Defendants.  
16

17 Pursuant to stipulation of the parties hereto, the  
18 United States Marshal IS HEREBY ORDERED AND DIRECTED to take the  
19 steps necessary to permit each and all of the defendants in the  
20 above-entitled matter to have the following conditions for  
21 preparation for trial:

22 1. Upon one days notice, or upon being furnished a  
23 schedule in advance, the said defendants shall be permitted to  
24 work with their attorneys on the preparation of their case at  
25 any and all times between the hours of 9:00 a.m. to 5:00 p.m.,  
26 Mondays through Fridays, inclusive, in Room 243B of the Federal  
27 Building in the city of Los Angeles, or at such place as the  
28 United States Marshall shall select. An attorney for said  
29 defendants need not be present at all times during the time that  
30 the defendants are so working on the preparation of their case  
31 for trial.

32 2. During the time that the defendants are so working

1 ERNEST A. TOLIN  
United States Attorney  
2 RAY H. KINNISON  
Assistant U. S. Attorney  
3 Chief of Criminal Division  
4 600 Federal Building  
Los Angeles 12, California  
5 Telephone: MADison 7411  
6 Attorneys for Respondent

7

8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
10 CENTRAL DIVISION

11 *Al Randal Jr.*

12 NO. 19437-HW

13 Petitioner,

14 vs.

15 RETURN TO WRIT OF HABEAS CORPUS

16 JAMES J. BOYLE, United  
17 States Marshal,

18 Respondent.

19 I, JAMES J. BOYLE, United States Marshal for the Southern  
20 District of California, respondent herein, on behalf of myself and  
21 each and all of my agents and deputies, respectfully make the following  
22 return and answer to this Honorable Court, to the writ of habeas corpus  
23 issued pursuant to the petition for writ of habeas corpus in the  
24 above case:

25 I

26 That the petitioner, Al Randal Jr., is not unlawfully  
27 fully imprisoned or restrained of liberty, and imprisonment  
28 and detention are not illegal, arbitrary or a denial of rights secure  
29 to by the Constitution of the United States, but said petitioner  
30 is in my custody under proper and lawful authority.

II

31 That said petitioner was taken into custody on July 26, 1951  
32 in the City of San Francisco, State of California, by Special Agents  
K:MM

1 is attached hereto as Exhibit "A". That said grand jury recommended  
2 bail in the amount of \$75,000 for the petitioner herein, and on the  
3 return of the indictment, said amount of bail was approved by  
4 Judge James M. Carter, before whom the said indictment was returned.  
5 On August 1, 1951, following the return of the indictment herein,  
6 the petitioner was removed from the City and County of San Francisco  
7 and brought to the County of Los Angeles, his custody was de-  
8 livered to the respondent herein, James J. Boyle, United States  
9 Marshal for the Southern District of California.

10 V..

11 On the 2nd day of August, 1951, the petitioner herein was  
12 arraigned on said indictment and, at the request of petitioner  
13 herein, the plea on said indictment was continued until the 13th  
14 day of August, 1951. On the 13th day of August, 1951, at the pe-  
15 titioner's request, the plea on said indictment was again con-  
16 tinued until the 20th day of August, 1951. On the 16th day of  
17 August, 1951, on petitioner's request, the Order setting said matte  
18 for plea on August 20th, 1951, was vacated and the plea on said  
19 indictment was again continued, at petitioner's request, until the  
20 22nd day of August, 1951. On August 22nd, 1951, the plea was  
21 continued to August 29th, 1951, and on August 29th, 1951, the  
22 petitioner herein entered a plea of not guilty before the Honorable  
23 Wm. C. Mathes, to whose Court the cause was transferred for all  
24 further proceedings.

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Following the proceedings set forth in paragraphs IX to XIX  
the petition herein and after the opinion by the United States Court  
of Appeals for the Ninth Circuit in the case of Philip Marshall  
Connell, petitioner, v. The United States District Court in and for  
the Southern District of California, Central Division, and Honorable  
James M. Carter, Judge thereof, respondents (No. 13053, decided Augu  
24, 1951), was rendered, Judge James M. Carter did, on the 29th day  
of August, 1951, disqualify himself as to both Philip Marshall Connell  
and the petitioner herein, and transferred all proceedings in said  
case of United States v. Schneiderman, et al., to Judge Paul J. McCormick,  
Presiding Judge of the United States District Court for the  
Southern District of California. Judge Paul J. McCormick on the same  
date assigned said case to Judge William C. Mathes for all further  
proceedings. Thereafter, on the 29th day of August, 1951, a motion  
made before the Honorable Wm.C.Mathes to reduce the bail of the pe-  
titioner herein, and following a full hearing lasting two days an  
order was made on August 30, 1951, reducing the amount of bail set  
said indictment to the sum of \$50,000. That petitioner has not given  
such bail and is detained by respondent pursuant to the proceedings  
aforesaid; that in said hearings before Judges Wm.C.Mathes and Louis  
E. Goodman the same matters were raised as are raised in the said  
petition, and said matters have already been litigated.

That the order of said Judge William C. Mathes fixing bail  
in the amount of \$50,000 does not, under the circumstances herein in-  
volved, constitute an excessive requirement of bail in accordance with  
the Eighth Amendment of the Constitution of the United States, and  
does not amount to a violation of said amendment or the Fifth Amend-  
ment thereto; and does not show any abuse of discretion by said  
Judge William C. Mathes.

## VIII

2 That named in the indictment above-mentioned, as unindicted co-  
3 conspirators with the petitioner herein, are: Robert G. Thompson,  
4 Henry Winston, Gilbert Green, and Gus Hall. That the said last-named  
5 individuals were defendants in the case of United States v. Dennis,  
6 et al., who were convicted in the Southern District of New York on  
7 a violation of the same Act under which the above-mentioned indictment  
8 was returned, and which conviction was, on June 4, 1951, affirmed by  
9 the Supreme Court of the United States. That, thereafter, said last  
10 named persons failed to appear and surrender to serve the sentence  
11 theretofore imposed and on July 2, 1951, bench warrants were ordered  
12 issued by the United States District Court for the Southern District  
13 of New York for said persons, and on July 3, 1951, the bonds thereto-  
14 fore posted (referred to in the petition herein) by said persons were  
15 ordered forfeited by that court. The nature of the offense charged  
16 in the indictment herein is the incitement of rebellion looking to  
17 the overthrow of the government of the United States by force and  
18 violence and disloyalty to the United States. Under the facts and  
19 circumstances here involved the defendants in said indictment, in-  
20 cluding the petitioner herein, lack the usual incentive of respect  
21 to said government. Your respondent alleges that the petitioner  
22 herein is a poor security risk and that unless a substantial bail is  
23 required of said petitioner, said petitioner would not appear to  
24 answer the charges contained in the indictment herein.

## IX

25  
26 That in none of the cases mentioned in EXHIBITS "A" and "B" of  
27 the petition herein, save and except the two New York cases of  
28 United States v. Dennis and United States v. Flynn, is the charge the  
29 same as is contained in the indictment herein, all of said cases  
30 being routine cases involving violations of various federal  
31 statutes.

1 WHEREFORE, the respondent, James J. Boyle, United States  
2 Marshal for the Southern District of California, having made due  
3 and full answer to the writ of habeas corpus heretofore issued  
4 herein, pursuant to the petition for writ of habeas corpus, res-  
5 pectfully prays that the petition for writ of habeas corpus be  
6 dismissed and that the petitioner, Al Riden, be re-  
7 manded to respondent's custody to be dealt with according to the  
8 laws of the United States of America.

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/s/ James J. Boyle  
JAMES J. BOYLE  
United States Marshal for the  
Southern District of California

1 UNITED STATES OF AMERICA

ss.

2 Southern District of California )

3 JAMES J. BOYLE, United States Marshal for the Southern  
4 District of California, being first duly sworn, on his oath  
5 deposes and says:

6 That he is the person who makes the aforesaid return;  
7 that he has read the same and knows the contents thereof, and  
8 that the same is true according to the best of his knowledge and  
9 belief.

10  
11  
12 /s/ James J. Boyle  
13 JAMES J. BOYLE

14  
15 SUBSCRIBED and SWORN to before me  
16 this 6th day of September, 1951

17 EDMUND L. SMITH

18 Clerk, United States District Court  
Southern District of California

19 By /s/ Charles A. Secty Deputy

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,  
DOROTHY ROSENBLUM HEALEY,  
ALBERT JASON LIMA,  
OLETA O'CONNOR YATES,  
CARL RUDE LAMBERT,  
PHILIP MARSHALL CONNELLY,  
ROSE CHERNIN KUSNITZ,  
AL RICHMOND, also known as  
Abraham Richman,  
ERNEST OTTO FOX, also known as  
Ernest Otto Fuchs,  
HENRY STEINBERG,  
LORETTA STARVUS STACK, and  
MARY BERNADETTE DOYLE,

Defendants.

No. CD  
(U.S.C., Title 18, Sec. 1  
1946 Ed. U.S.C., Title 18  
Sec. 371 1948 Ed.) Section  
of the Smith Act, 54 Stat  
671 - Conspiracy to violate  
the Smith Act)

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuous thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendant herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the object thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

#### OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARYUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY STEINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHETWYN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALCY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LIMA, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CUNNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIMA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, ELITA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

\_\_\_\_\_  
Foreman

ERNEST A. TOLIN,  
United States Attorney.

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

CENTRAL DIVISION

12 : LORETTA STARVUS STACK.

Petitioner,

14 vs.

No. 13436

15 JAMES J. BOYLE, United  
States Marshal,

**Respondent.**

18 AL RICHMOND.

~~Petitioner.~~

20

No. 13437

21 JAMES J. BOYLE, United  
States Marshal,

**Respondent.**

24 PHILIP MARSHALL CONNELLY.

Petitioner.

26 vs.

No. 13 438

27 JAMES J. BOYLE, United  
States Marshal,

**Respondent.**

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1 DOROTHY ROSENBLUM HEALEY, }  
2 Petitioner, }  
3 vs. } No. 13439  
4 JAMES J. BOYLE, United }  
5 States Marshal, }  
6 Respondent. }  
7 ERNEST OTTO FOX, }  
8 Petitioner, }  
9 vs. } No. 13440  
10 JAMES J. BOYLE, United }  
11 States Marshal, }  
12 Respondent. }  
13 WILLIAM SCHNEIDERMAN, }  
14 Petitioner, }  
15 vs. } No. 13441  
16 JAMES J. BOYLE, United }  
17 States Marshal, }  
18 Respondent. }  
19 CARL RUDE LAMBER, }  
20 Petitioner, }  
21 vs. } No. 13442  
22 JAMES J. BOYLE, United }  
23 States Marshal, }  
24 Respondent. }  
25 HENRY STEINBERG, }  
26 Petitioner, }  
27 vs. } No. 13443  
28 JAMES J. BOYLE, United }  
29 States Marshal, }  
30 Respondent. }  
31  
32

1 CLETA O'CONNOR YATES, . . . . .  
2 . . . Petitioner, . . . . .  
3 vs. . . . . .  
4 JAMES J. BOYLE, United . . . . .  
States Marshal, . . . . .  
5 . . . Respondent. . . . .  
6 \_\_\_\_\_  
7 ROSE CHERNIN KUSNITZ, . . . . .  
8 . . . Petitioner, . . . . .  
9 vs. . . . . .  
10 JAMES J. BOYEE, United . . . . .  
States Marshal, . . . . .  
11 . . . Respondent. . . . .  
12 \_\_\_\_\_  
13 MARY BERNADETTE DOYLE, . . . . .  
14 . . . Petitioner, . . . . .  
15 vs. . . . . .  
16 JAMES J. BOYLE, United . . . . .  
States Marshal, . . . . .  
17 . . . Respondent. . . . .  
18 \_\_\_\_\_  
19 ALBERT JASON LIMA, . . . . .  
20 . . . Petitioner, . . . . .  
21 vs. . . . . .  
22 JAMES J. BOYLE, United . . . . .  
States Marshal, . . . . .  
23 . . . Respondent. . . . .  
24 \_\_\_\_\_  
25  
26 STIPULATION  
27  
28 IT IS HEREBY STIPULATED, CONSENTED AND AGREED by and between  
29 the attorneys for petitioners above named and the attorneys for the  
30 respondent herein that the petitions for writs of habeas corpus  
31 in the above entitled causes shall be consolidated and treated as  
32

1 a joint petition for writ of habeas corpus.

2 DATED: This 6th day of September, 1951.

3

4

/s/ Ben Margolis  
Ben Margolis

5

6

7

/s/ Daniel G. Marshall  
Daniel G. Marshall

8

9

Attorneys for Petitioner Philip  
Marshall Connelly

10

11

12

MARGOLIS and McTERNAN

By /s/ Ben Margolis  
Ben Margolis

13

14

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/s/ Leo A. Sullivan  
Leo A. Sullivan

Attorneys for remaining Petitioners

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ERNEST A. TOLIN  
United States Attorney

By /s/ Ray H. Kinnison  
Ray H. Kinnison  
Assistant United States Attorney

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ORDER:

24

It is so ordered.

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/s/ Ben Harrison  
JUDGE of the United States District

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7  
8       IN THE DISTRICT COURT OF THE UNITED STATES  
9                   SOUTHERN DISTRICT OF CALIFORNIA  
10                   CENTRAL DIVISION  
11

12   LORETTA STARVUS STACK,

13                   Petitioner,

14                   No. 13436-BH

15   vs.

16   JAMES J. BOYLE, United  
17                   States Marshal,

18                   Respondent.

19   AL RICHMOND,

20                   Petitioner,

21                   No. 13437-BH

22   vs.

23   JAMES J. BOYLE, United  
24                   States Marshal,

25                   Respondent.

26   PHILIP MARSHALL CONNELLY,

27                   Petitioner,

28                   No. 13438-BH

29   vs.

30   JAMES J. BOYLE, United  
31                   States Marshal,

32                   Respondent.

1 DOROTHY ROSENBLUM HEALEY,

2 Petitioner,

3 vs.

4 JAMES J. BOYLE, United  
States Marshal,

5 Respondent.

7 ERNEST OTTO FOX,

8 Petitioner,

9 vs.

10 JAMES J. BOYLE, United  
States Marshal,

11 Respondent.

13 WILLIAM SCHNEIDERMAN,

14 Petitioner,

15 vs.

16 JAMES J. BOYLE, United  
States Marshal,

17 Respondent.

19 CARL RUDE LAMBERT,

20 Petitioner,

21 vs.

22 JAMES J. BOYLE, United  
States Marshal,

23 Respondent.

25 HENRY STEINBERG,

26 Petitioner,

27 vs.

28 JAMES J. BOYLE, United  
States Marshal,

29 Respondent.

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No. 13439-BH

1 OLETA O'CONNOR YATES,  
2 Petitioner,  
3 vs.  
4 JAMES J. BOYLE, United  
5 States Marshal,  
6 Respondent.

No. 13444-BH

No. 13440-BH

7 ROSE CHERNIN KUSNITZ,  
8 Petitioner,  
9 vs.  
10 JAMES J. BOYLE, United  
11 States Marshal,  
12 Respondent.

No. 13445-BH

No. 13441-BH

13 MARY BERNADETTE DOYLE,  
14 Petitioner,  
15 vs.  
16 JAMES J. BOYLE, United  
17 States Marshal,  
18 Respondent.

No. 13446-BH

No. 13442-BH

19 ALBERT JASON LIMA,  
20 Petitioner,  
21 vs.  
22 JAMES J. BOYLE, United  
23 States Marshal,  
24 Respondent.

No. 13447-BH

No. 13443-BH

25  
26 MEMORANDUM OPINION.  
27  
28 The above petitions for writs of habeas corpus were con-  
29 solidated for hearing and the sole question for this court to de-  
30 termine in each matter is whether the bail of \$50,000 is excessi-  
31 and by reason thereof petitioners are unlawfully deprived of the  
32 liberty contrary to the provisions of the Eighth Amendment to the

1 Constitution of the United States.

2 It appears from the records of this court and the trans-  
3 script of various proceedings that the question of bail as to some  
4 of the petitioners has been before two district judges of this dis-  
5 trict, one in San Francisco (Judge Goodman), and one in New York  
6 (Judge Dimock). (See Cr. file No. 21883 of this district).

7 Now through these proceedings petitioners seek to have  
8 me ignore the record, absolutely strike from my mind the separate  
9 rulings by four district judges, and indirectly hold that the bail  
10 fixed is excessive and each of said judges has abused the dis-  
11 cretion vested in him.

12 Counsel for petitioners claim that bail in excess of  
13 \$5,000 would be prohibitive, therefore, the court should fix bail  
14 in that amount. In other words, petitioners contend that bail  
15 should be fixed in accordance with their ability to furnish bail.  
16 To follow their argument to a natural conclusion, if they could  
17 raise bail in an amount just in excess of \$10, the bail should be  
18 so fixed. If such a rule were adopted all prisoners now waiting  
19 for trial on trial would be entitled to have bail  
20 fixed in accordance with their respective abilities.

21 As intimated in H. R. ex rel. Rubinstein v. Mulcahy etc.,  
22 155 F. (2d) 300: "The purpose of bail before trial is to insure  
23 the presence of the accused when required without the hardship of  
24 incarceration before guilt has been proved and while the presump-  
25 tion of innocence is to be given effect." (See also Rule 46(c)  
26 F.R.C.P.).

27 How much should the bail of petitioners be to meet the  
28 requirements of the foregoing quotation? The Grand Jury that heard  
29 the evidence recommended \$75,000. How can I say that all who have  
30 exercised their discretion are wrong because I may or may not agree  
31 with them?

32 When a person is released on bail before trial such per-

1 son is a calculated risk and the amount of bail resolves itself  
2 into a matter of judgment. Sometimes the courts are wrong but  
3 fortunately the defendants usually appear. The offenses charged  
4 are very serious and the court realizes as a matter of common  
5 knowledge that those charged with similar and related offenses the  
6 forfeitures have been above average and apprehension after for-  
7 feiture has been nil. Should the court ignore these facts?

8 Perhaps through these proceedings our reviewing courts  
9 can furnish the trial courts with a yardstick to determine the  
10 amount of bail required to assure the presence at the time of  
11 trial of the petitioners and others similarly charged. My only  
12 hope is that their judgment on such calculated risks may be cor-  
13 rect.

14 I have ordered the transcript of the proceedings before  
15 Judge Mathes filed as an exhibit in these proceedings, together  
16 with the records of the court on the motions for reduction of bail  
17 before him in the criminal case, and have admitted in evidence the  
18 transcript of the proceedings in Healey et al. v. Boyle, No. 13361  
19 to No. 13370. I have examined such proceedings and have consid-  
20 ered the same and am unable to conclude that the amount of bail,  
21 fixed in each instance is either arbitrary or the result of an  
22 abuse of discretion. I further find that such amounts as were  
23 fixed are necessary to assure the presence of the petitioners in  
24 the further proceedings in the criminal case and for no other pur-  
25 pose.

26 The procedure followed in these matters is that outlined  
27 in the Rubenstein case (155 F. (2d) 1002). The record herein in-  
28 dicates that such procedure is cumbersome and unnecessarily delays  
29 the ultimate disposition of matters that are entitled to expedi-  
30 tious action by the courts.

31 I make these comments not in criticism of the present  
32 method but rather as an invitation to our reviewing courts to

1 provide a more expeditious procedure. With my ruling in this case,  
2 five district judges have passed on the reasonableness of the  
3 amount of bail. If we are in error petitioners have had to  
4 languish in jail to meet the requirements of legal formalism.

5 The petition for writ of habeas corpus in each matter is  
6 hereby denied and the petition in each instance is hereby dis-  
7 missed.

8 The government is ordered to submit forthwith proposed  
9 order of dismissal of said petitions.

10 DATED: This 12th day of September, 1951.

11  
12 /s/ Ben Harrison

13 JUDGE  
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32

1 ERNEST A. TOLIN  
2       United States Attorney  
3 RAY H. KINNISON  
4       Assistant U. S. Attorney  
5       Chief of Criminal Division  
6 600 Federal Building  
7 Los Angeles 12, California  
8 Telephone: MADISON 7411  
9 Attorneys for Respondent

10  
11  
12       IN THE UNITED STATES DISTRICT COURT  
13       IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
14       CENTRAL DIVISION

15 LORETTA STARVUS STACK, AL       }  
16 RICHMOND, PHILIP MARSHALL       }  
17 CONNELLY, DOROTHY ROSENBLUM       }  
18 HEALEY, ERNEST OTTO FOX       }  
19 WILLIAM SCHNEIDERMAN, CARL       }  
20 RUDE LAMBERT, HENRY STEINBERG       }  
21 OLETA O'CONNOR YATES, ROSE       }  
22 CHERNIN KUSNITZ, MARY BERNADETTE       }  
23 DOYLE, and ALBERT JASON LIMA,       }  
24       Petitioners,

25       v.

26 JAMES J. BOYLE, United  
27 States Marshal,

28       Respondent.

29       No. 13436/13447

30       ORDER DENYING PETITIONS FOR  
31       WRITS OF HABEAS CORPUS AND  
32       DISCHARGING ORDERS TO SHOW  
33       CAUSE WHY WRITS OF HABEAS  
34       CORPUS SHOULD NOT BE GRANTED

35       The above-entitled matters came on regularly for hearing on  
36 September 6, 1951, before the Honorable Ben Harrison, Judge presid-  
37 ing, on Orders to Show Cause Why Writs of Habeas Corpus should not  
38 be granted, the petitioner Philip Marshall Connally being represent-  
39 ed by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall,  
40 Esq. and the remaining petitioners by their attorneys Margolis and  
41 McTernan, Esq., by Ben Margolis, Esq., and the respondent, James  
42 J. Boyle, being represented by his counsel, Ernest A. Tolin, United  
43 States Attorney for the Southern District of California, and Ray H.  
44 Kinnison, Assistant United States Attorney for the Southern District  
45 of California, and A. L. Wirin, Esq., appearing as *amicus curiae*; the

1 Court having ordered upon the stipulation of the attorneys for the  
2 respective parties that the petitions for writs of habeas corpus  
3 be consolidated and treated as a joint petition for writ of habeas  
4 corpus; and the Court having read the petitions for Writs of Habeas  
5 Corpus on file, the Return thereto filed by the respondent to said  
6 petitions for Writs of Habeas Corpus herein; and the Court finding  
7 that on July 31, 1951, and prior to the hearing herein, a True Bill  
8 of indictment was returned in this Court before Judge James M.  
9 Carter, by the Grand Jury for the Southern District of California,  
10 charging the petitioners and others with conspiracy to commit of-  
11 fenses against the United States prohibited by Section 2 of the  
12 Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C.  
13 (1948 ed.) 2385, and said indictment having been ordered filed  
14 under Case No. 21883-CD, and on recommendation of said Grand Jury,  
15 Judge James M. Carter then set bail for the petitioner William  
16 Schneiderman in the amount of \$100,000 and in the amount of \$75,000  
17 for the remaining petitioners, and thereafter, on the 7th day of  
18 August, 1951, petitioners filed with said Judge James M. Carter a  
19 motion to reduce the amount of bail; that the said Judge James M.  
20 Carter on August 29, 1951 disqualified himself from any further  
21 proceedings in the prosecution of the petitioners herein including  
22 proceedings on bail; that the said proceedings were then assigned  
23 by Chief Judge Paul J. McCormick to Judge William C. Mathes and the  
24 aforesaid motions to reduce bail came on for hearing before the said  
25 Judge William C. Mathes, and following a full hearing on said motions  
26 Judge William C. Mathes on August 30, 1951 did reduce the amount of  
27 bail for each of the petitioners to \$50,000, and the Court having  
28 taken testimony on the petition herein and having heard arguments,  
29 and the Court being fully advised in the premises, and it appearing  
30 to the satisfaction of the Court, and the Court finding for the  
31 reasons aforesaid that the relief prayed for in the aforesaid peti-  
32 tions for Writs of Habeas Corpus should not be granted; that the

1 orders to show cause why the petitions or writ of habeas corpus  
2 should not be granted should be discharged, and that said Petitions  
3 for Writs of Habeas Corpus should be denied, and said cause having  
4 been submitted to the Court for decision;

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid  
6 Petitions for Writs of Habeas Corpus heretofore filed in the above  
7 entitled matters be, and the same hereby are, denied; and

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid  
9 Orders to show Cause why the Petitions for Writs should not be  
10 granted be, and the same hereby, are discharged.

11 DATED: This 12th day of September, 1951.

12

13

14

Received copy of the within  
15 Order Denying Petitions for  
- Writs of Habeas Corpus, Dis-  
16 charging Orders to Show Cause,  
and Dismissing Writ of Habeas  
17 Corpus this 12th day of Septem-  
ber, 1951, and approved as to  
18 form.

19

20

Ben Margolis

21

22

Daniel G. Marshall

23

Attorneys for Petitioner Philip  
24 Marshall Connelly

25 MARGOLIS and McTERNAN

26

27

By Ben Margolis

28

Attorneys for remaining Petitioners

29

30

31

32

/s/ Ben Harrison  
United States District Judge

1 Ben Margolis Margolis and McTernan 1  
112 West Ninth Street 112 West Ninth Street 1  
2 Los Angeles 15, California Los Angeles 15, California 2  
VAndike 7153 VAndike 7153  
3 and 3  
Daniel G. Marshall and 3  
4 458 South Spring Street 1440 Broadway Street 4  
Los Angeles 13, California Oakland, California 4  
5 TRinity 6011 Hightower 4-1707 5  
6 Attorneys for Petitioner- Attorneys for remaining 6  
Appellant Philip Marshall Connolly Petitioners-Appellants 6  
7  
8 IN THE UNITED STATES DISTRICT COURT 8  
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA 9  
10 CENTRAL DIVISION 10  
11  
12 LORETTA STARVUS STACK, AL ) 11  
RICHMOND, PHILIP MARSHALL ) 12  
CONNELLY, DOROTHY ROSENBLUM ) 13  
HEALEY, ERNEST OTTO FOX, ) 13  
WILLIAM SCHNEIDERMAN, CARL ) 14  
RUDE LAMBERT, HENRY STEINBERG, ) 14  
OLETA O'CONNOR YATES, ROSE ) 15  
CHERNIN KUSNITZ, MARY BERNADETTE ) Nos. 13436/13447 15  
DOYLE and ALBERT JASON LIMA, ) 16  
17 Petitioners-Appellants, ) NOTICE OF APPEAL 17  
18 vs. ) 18  
19 JAMES J. BOYLE, United States ) 19  
Marshal, ) 19  
20 Respondent. ) 20  
21  
22  
23 NOTICE IS HEREBY GIVEN that the petitioners-appellants 23  
24 above named hereby appeal to the United States Court of Appeals 24  
25 for the Ninth Circuit from the order denying the petitions for 25  
26 writs of habeas corpus herein and discharging the orders to 26  
27 show cause why the petitions for writs should not be granted, 27  
28 made and entered in this action by the "United States District 28  
29 Court, Honorable Ben Harrison, Judge Presiding, on the 6th day 29  
30 of September, 1951. 30  
31 DATED: This 12th day of September, 1951. 31  
32

)  
Nos. 13436/13447  
NOTICE OF APPEAL

23 NOTICE IS HEREBY GIVEN that the petitioners-appellants 23  
24 above named hereby appeal to the United States Court of Appeals 24  
25 for the Ninth Circuit from the order denying the petitions for 25  
26 writs of habeas corpus herein and discharging the orders to 26  
27 show cause why the petitions for writs should not be granted, 27  
28 made and entered in this action by the "United States District 28  
29 Court, Honorable Ben Harrison, Judge Presiding, on the 6th day 29  
30 of September, 1951. 30

31 DATED: This 12th day of September, 1951. 31

/s/ Ben Margolis

Ben Margolis

/s/ Daniel G. Marshall

Daniel G. Marshall

Attorneys for Petitioner-Appellant

Philip Marshall Connolly

MARGOLIS and McTERNAN

By /s/ Ben Margolis

Ben Margolis

/s/ Leo A. Sullivan

Leo A. Sullivan

Attorneys for remaining Petitioners-

Appellants

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4 VAndike 7153

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10 Attorneys for Petitioner  
11 Philip Marshall Connelly

12 MARGOLIS and McTERNAN  
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15 VAndike 7153

16 and  
17 LEO A. SULLIVAN  
18 1440 Broadway Street  
19 Oakland, California  
20 Hightower 4-1707

21 Attorneys for remaining  
22 Petitioners

23 IN THE UNITED STATES DISTRICT COURT  
24 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
25 CENTRAL DIVISION

26 LORETTA STARVUS STACK, AL  
27 RICHMOND, PHILIP MARSHALL,  
28 CONNELLY, DOROTHY ROSENBLUM  
29 HEALEY, ERNEST OTTO FOX,  
30 WILLIAM SCHNEIDERMAN, CARL  
31 RUDE LAMBERT, HENRY STEINBERG,  
32 OLETA O'CONNOR YATES, ROSE  
33 CHERNIN KUSNITZ, MARY BERNADETTE  
34 DOYLE and ALBERT JASON LIMA,

35 Nos. 13436/13447

36 DESIGNATION OF RECORD

37 Petitioners,

38 vs.

39 JAMES J. BOYLE, United  
40 States Marshal,

41 Respondent.

42 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
43 SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLI  
44 UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

45 The petitioners above named designate for inclusion in the  
46 record on appeal herein a complete record of all the proceedings  
47 and evidence in the above entitled causes including the petitions  
48 for writs of habeas corpus, the orders to show cause, the stipula-  
49 tion and order treating the petitions as a joint petition for writ  
50 of habeas corpus, the return of the respondent, the reporter's  
51 transcript of hearing on September 6, 1951, the order denying the  
52 petitions and discharging the orders to show cause, the notice of

1 appeal, this designation of the record and any stipulations  
2 between the parties relative to the record on appeal herein or  
3 the argument of the appeal.

4 DATED: September 12, 1951.

5  
6 /s/ Ben Margolis  
7 Ben Margolis

8 /s/ Daniel G. Marshall  
9 Daniel G. Marshall

10 Attorneys for Petitioner Philip  
11 Marshall Connelly

12 MARGOLIS and McTERNAN  
13 By /s/ Ben Margolis  
14 Ben Margolis

15 /s/ Leo A. Sullivan  
16 Leo. A. Sullivan

17 Attorneys for remaining Petitione

18 Agreed to:

19 /s/ Ernest A. Tolin  
20 United States Attorney